

PATENT

Atty. Dkt. No. 03493.86913 (ATT/112518CON)

remarks

In view of the following discussion, the Applicants submit that none of the claims now pending in the application are unpatentable under the provisions of 35 U.S.C. § 103. Thus, the Applicants believe that all of these claims are now in allowable form.

I. REJECTION OF CLAIM 32, 34 AND 35 UNDER 35 U.S.C. § 103

The Examiner has rejected claims 32, 34 and 35 in the Office Action under 35 U.S.C. § 103 as being unpatentable over Aho (US Patent 6,185,215, issued February 6, 2001, hereinafter referred to as "Aho") in view of Johnson et al. (US Patent 5,974,052, issued October 26, 1999, hereinafter referred to as "Johnson"). Applicants respectfully traverse the rejection.

Aho teaches a combined router, ATM, WAN and/or LAN switch cut through and method of use. A router determines if the data flow is suitable for a cut through. (See Aho, Abstract.) If suitable, the router stores and forwards a first portion of a data flow from a source to a destination. (See Aho, Col. 3, Lines 38-52.) The remainder of the data flow is directed to a different destination address. (See *Id.*)

Johnson teaches a frame relay access device and method for transporting SS7 information between signaling points.

The Examiner's attention is directed to the fact that Aho and Johnson (alone or in any permissible combination) fail to teach or suggest a network comprising a frame relay switch for translating user data within at least one of the frame relay data packets into a fast packet address; wherein the frame relay switch is responsive to a plurality of different service categories and configured to determine a quality of service responsive to layer 4 data, as positively claimed by Applicants in independent claim 32, which recites:

32. A network comprising:
customer premises equipment;
a frame relay switch coupled to the customer premises equipment with at least one permanent virtual circuit and receiving a plurality of frame relay data packets, the frame relay switch for translating user data within at least one of the frame relay data packets into a fast packet address;

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wherein the frame relay switch is responsive to a plurality of different service categories and configured to determine a quality of service responsive to layer 4 data. (Emphasis added.)

In one embodiment, the Applicants' invention teaches that layer 4 data may be utilized to determine a quality of service. For example, the switch can use the IP addresses and/or TCP logical ports to make quality of service (QOS) decisions. (e.g., See Applicants' specification, page 13, lines 7-9).

Additionally, in one embodiment, the Applicants' invention teaches that the switch is responsive to a plurality of service categories. The service categories may include the public internet, communication via a local intranet, communication within a closed user group (CUG), communication with an extranet, live audio/video transmission, multicasting, telephony over IP, or any combination thereof. (e.g., See Applicants' Specification, Page 13, Lines 15-21.) As such, Applicants' invention teaches a frame relay switch that is responsive to a plurality of different service categories AND configured to determine a quality of service responsive to layer 4 data.

In contrast, the alleged combination (as taught by Aho) fails to teach, show or suggest data layers that include service classes or categories as taught by Applicants' invention. Aho only mentions that quality of service parameters and bandwidth information can be sent by a router. (See Aho, Col. 9, Lines 40-50.) However, Aho is completely devoid of any teaching or suggestion that such information is transmitted using Layer 4 data as positively claimed by the Applicants. In addition, as conceded by the Examiner, Aho fails to teach, show or suggest a frame relay switch for translating user data within at least one of the frame relay data packets into a fast packet address.

Moreover, the significant gap left by Aho is not bridged by the combination of Johnson with Aho. The Examiner has conceded that Aho did not teach the fast packet address being the result of the translation as recited in claim 32. (See Office Action, Page 4, Lines 8-10.) However, the Examiner asserts that Johnson teaches fast packet addresses. The Applicants respectfully submit that the Examiner has interpreted Johnson too broadly. Johnson merely mentions fast packet multiplexing and frame switching as independent methods of efficient means to transport large quantities of data. However, Johnson is completely devoid of any teaching or suggestion of

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translating user data within at least one of the frame relay data packets into a fast packet address, as positively claimed by the Applicants. It is respectfully submitted that a mere mentioning of the terms "fast packet multiplexing" and "frame switching" does not translate into the teaching of translating user data within at least one of the frame relay data packets into a fast packet address. As such, Johnson does not teach, show or suggest a frame relay switch for translating user data within at least one of the frame relay data packets into a fast packet address and fails to bridge the substantial gap left by Aho.

In rejecting claims under 35 U.S.C. §103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. See In re Fine, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the Examiner is expected to make the factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), and to provide a reason why one having ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. Such reason must stem from some teaching, suggestion or implication in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir.), cert. denied, 488 U.S. 825 (1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281 293, 227 USPQ 657, 664 (Fed. Cir. 1985), cert. Denied, 475 U.S. 1017 (1986); ACS Hosp. Sys., Inc. v. Montefiore Hosp., 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). These showings by the Examiner are an essential part of complying with the burden of presenting a prima facie case of obviousness. Note In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). Applicants respectfully submit that the Examiner has failed to present a prima facie case of obviousness against Applicants' independent claim 32 in view of Aho and Johnson.

Dependent claims 34 and 35 depend from claim 32 and recite additional limitation, respectively. As such, and for the exact same reason set forth above, the Applicants submit that claims 34 and 35 are also not unpatentable over the teachings of Aho and Johnson. Therefore, the Applicants submit that claims 32, 34 and 35, as they

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now stand, fully satisfy the requirements of 35 U.S.C. §103 and are patentable thereunder.

Conclusion

Thus, the Applicants submit that all of these claims now fully satisfy the requirements of 35 U.S.C. §103. Consequently, the Applicants believe that all these claims are presently in condition for allowance. Accordingly, both reconsideration of this application and its swift passage to issue are earnestly solicited.

If, however, the Examiner believes that there are any unresolved issues requiring the issuance of a final action in any of the claims now pending in the application, it is requested that the Examiner telephone Mr. Kin-Wah Tong, Esq. at (732) 530-9404 so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,

3/29/05



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